

# **Bill Summary:** Childcare Funding (Wales) Bill



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# **Bill Summary:** Childcare Funding (Wales) Bill

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This paper provides a summary of the Welsh Government's Childcare Funding (Wales) Bill. It includes a summary provisions of the Bill, and highlights key aspects and documents related to the Bill. It also includes some policy background.





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## 1. Introduction

On 16 April 2018, Huw Irranca-Davies AM, Minister for Children and Social Care, introduced the **Childcare Funding (Wales) Bill** and Explanatory Memorandum. The Minister then made an **oral statement in plenary** on 17 April 2018, explaining that

The Bill, although technical in nature, will make it possible for the Welsh Government to put in place a national application and eligibility checking system to support the childcare offer in Wales.

A 'Statement of Policy Intent for Subordinate Legislation to be made under this Bill' was also released on 17 April 2018. This statement says it

provides an indication of the current policy intention for the subordinate legislation that the Welsh Ministers would be empowered or required to make under the provisions of the Childcare Funding (Wales) Bill (the Bill).

### The childcare offer in Wales

The Welsh Government is committed to providing 30 hours a week of Government-funded early education and childcare to working parents of three and four-year-olds in Wales for up to 48 weeks per year.

This is known as the childcare offer (the Offer) and was a commitment made in the Welsh Labour party's 2016 election manifesto 'Together for Wales'. It was subsequently included in the Welsh Government's programme for government **'Taking Wales Forward 2016-2021'**.

Currently all 3 and 4 year old children (from the term after their third birthday) are entitled to a minimum of 10 hours early education per week during term time over 39 weeks of the year, **as part of the Foundation Phase**. The Offer is designed to build on this universal entitlement. The Bill and its Explanatory Memorandum relate to the childcare element of the Offer only.

The Welsh Government began **piloting the offer in September 2017**, with the additional childcare currently available in all or some areas within the following local authorities:

- Isle of Anglesey County Council;
- Gwynedd Council;

- Caerphilly County Borough Council;
- Flintshire County Council;
- Rhondda Cynon Taf County Borough Council;
- Swansea Council; and
- Blaenau Gwent County Borough Council.

The Welsh Government is paying providers who are delivering the Offer £4.50 per hour per child, providers are then unable to charge any 'top up fees' above what the Welsh Government pays them. However, providers are entitled to charge parents up to £7.50 a day for food (estimated at three meals at £2 per meal and 2 snacks at a charge of 75p per snack). Providers can also charge for activities and transport, such as trips off site that incur additional costs.

The Minister for Children and Social Care, Huw Irranca-Davies AM, Member in Charge of the Bill, **[gave evidence to the Children, Young People and Education Committee](#)** about the Offer on 18 April 2018. As part of that evidence he reported that

we have the confidence now that, with that learning going on from different pilot areas, we'll have the full roll-out by 2020.

The **[Welsh Government has reported](#)** the budget for the development and delivery of the offer as:

- £10 million in 2017-18;
- £25 million in 2018-19; and
- £45 million in 2019-20.

The Welsh Government has estimated the annual cost of the offer, once it is fully rolled out will be around £100 million per year.

## The childcare offer in England

In England, all three and four year olds are entitled to 15 hours of free childcare over 38 weeks. The UK Government's **[Childcare Act 2016](#)** 'extended entitlement' to



the equivalent of 30 hours of free childcare over 38 weeks<sup>1</sup> for ‘working parents’, **starting in September 2017.**

In order to access the extended entitlement in England, the child’s parents need to prove their entitlement. They do this by gaining a determination of eligibility from Her Majesty’s Revenue and Customs (HMRC) by applying through the **UK Government’s Childcare Service website.** Eligible parents will then receive an eligibility code which they then provide to their childcare provider.

In July 2017, the UK Government published the **‘30 hours free childcare: early implementation evaluation’**, which covered

- if there were enough available places;
- the use of the entitlement by parents; and
- effects on childcare use and parental work.

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<sup>1</sup> The **House of Commons Library briefing paper on Childcare** in England explains that ‘the extended entitlement amounts to a total of 1140 hours of free childcare a year, which is commonly taken as 30 hours over 38 weeks, but may be “stretched” with fewer weekly hours over more weeks’.

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## 2. Overview of the Bill

The Bill's Explanatory Memorandum states that

The primary purpose of this Bill is to support the Welsh economy, by helping parents, particularly mothers, to return to work or increase the hours they work. This will both increase the size of the workforce, and improve the employability of parents, especially mothers.

The Bill will also support a number of additional purposes, including increasing parents employment choices, particularly those of mothers and improving the social wellbeing of children and parents, with improvements to the quality of family life and childhood experiences that come with an increased disposable income...

The end result will be one consistent, national online application and eligibility checking system that applicants can use to apply for childcare funding for their child, as well as a telephone line for those who are not able to access the online system.

The Bill gives the Welsh Ministers the power to provide funding for childcare for qualifying children of working parents and to make regulations about the arrangements for administering and operating such funding.

The Explanatory Memorandum states that, to achieve these aims, the Bill provides the Welsh Ministers with regulation-making powers to:

- prescribe the conditions which will have to be met for a child to be considered eligible for funding (i.e. to be considered a “qualifying child”), including any declarations that will have to be made and any conditions which will have to be met by the parent of a child;
- make provision to require parents to provide information that is relevant to their application for childcare funding and make arrangements for financial penalties to be imposed where false or misleading information is provided;
- make provision that will permit HMRC and permit or require UK Government departments, Ministers of the Crown and local authorities to provide qualifying information to the Welsh Ministers or to a person providing services to the Welsh Ministers for the purposes of administering the scheme; and

- prescribe the detail of arrangements for onward disclosure of qualifying information and to create criminal offences in connection with the onward disclosure of information that relates to a particular person.

## Bill provisions

The **Bill as introduced** is relatively short, with one part containing 13 sections over seven pages. These sections are summarised below.

**Section 1** provides the Welsh Ministers with the power to provide funding to any person, to secure childcare for the ‘qualifying children of working parents’. It further grants the Welsh Ministers the power to establish the terms of a child’s eligibility for funded childcare through regulations.

**Section 2** gives the Welsh Ministers with the power to make regulations setting out arrangements for the administration and operation of the funding of the scheme. Section 2 is overarching, and relates to the regulations to be made under sections 3 to 7.

**Section 3** provides that regulations (made under section 2) can require parents, who are applying for the funded childcare, to provide the necessary information to process their application. It also gives the Welsh Ministers the power to set a penalty of up to £3000 for any applicants who provide ‘false or misleading’ information as part of their application for free childcare.

**Section 4** of the Act specifies that the Welsh Ministers may by regulations (made under section 2) make provision about the sharing of ‘qualifying’ information by and with HMRC, a Minister of the Crown, a UK government department, or a local authority. The Welsh Ministers must specify what “qualifying information” is for the purposes of the section but may only use the power to specify information which is required to determine eligibility for funding under section 1. Regulations will in certain circumstances require the consent of the relevant Minister of the Crown.

**Section 5** enables regulations (made under section 2) to make provision for the onward disclosure of information. It also enables provision to be made for criminal offences in connection with the unauthorised onward disclosure of information that has been shared for the purposes of deciding a person’s eligibility to receive funded childcare.

**Section 6** enables Welsh Ministers to make provision about reviews and appeals (currently to the First-tier Tribunal) for parents who disagree with their eligibility determination or if they have been issued with a penalty under section 3.

**Section 7** grants the Welsh Ministers power to confer functions on local authorities in regards to the provision of funding, as set out in section 1.

**Section 8** makes a consequential amendment to **Section 18 (Confidentiality)** of the **Commissioners for Revenue and Customs Act 2005**.

**Section 9** defines “local authority” for the purposes of the Bill.

**Section 10** provides the Welsh Ministers with the power to change amount of financial penalty for provision of false or misleading as set out in section 3.

**Section 11** provides that any regulations under the Act are to be made using the affirmative procedure.

**Sections 12** provides that sections 12 and 13 of the Bill come into force on the day after Royal Assent is received. All other provisions come into force by way of Order.

**Section 13** states the short title of the Act as *Childcare Funding (Wales) Act 2018*.

The Bill’s explanatory notes can be found in Annex 1 (page 61) of the Explanatory memorandum.

### 3. Documents accompanying the Bill

There are two documents that accompany the Bill:

- the explanatory memorandum (including incorporating the Regulatory Impact Assessment and Explanatory Notes); and
- a Statement of Policy Intent for Subordinate Legislation to be made under this Bill.

The Welsh Government, in its Statement of Policy Intent, has indicated that an Administrative Scheme will be developed which ‘will explain what an eligible child will be able to receive and where / by whom the funded childcare will be delivered’. There is no timeframe for when this Scheme will become available, but the Welsh Government states the scheme will be informed by the ‘lessons being learned from the early implementation of the Offer’.

An additional relevant document was highlighted in the Minister for Children and Social Care’s evidence to the CYPE Committee on 18 April 2018. He noted that in October 2018, an evaluation of the first year of the early implementation of the child care offer will be submitted to the Welsh Government.

#### Explanatory memorandum Part 1

The **Bill’s Explanatory Memorandum** (EM) is 103 pages long and is split into two main parts and 8 annexes. Part 1 is the Explanatory Memorandum, which includes:

- the Welsh Government’s assessment of the Assembly’s relevant legislative competence;
- an overview of the purpose and intended effect of the Bill; and
- an overview of the consultation the Welsh Government has undertaken as part of the developing the Bill and the wider policy behind it.

Sections 3.10-3.13 of Part 1 highlights the proposed eligibility criteria for the Offer the Welsh Government intends to deliver. Broadly speaking these are that the Offer will be available from the term after the child’s third birthday until the September after their fourth birthday, if that child’s parent/s:

- is/are earning, on average, a weekly minimum equivalent to 16 hours at national minimum wage (NMW) or national living wage (NLW) over a three month period; and

- do not earn over £100,000 or more a year (gross).

There are exceptions for parent/s are temporarily away from work due to statutory parental, maternity, paternity or adoption leave or sickness or where one parent works and another is in receipt of certain benefits or has substantial caring responsibilities.

Any regulations that are brought forward under the Bill will be made using the affirmative procedure.

## Explanatory Memorandum Part 2

Part 2 of the EM provides the regulatory impact assessment (RIA) for the Bill. The RIA sets out the following four options, along with the Welsh Government's evaluation of each, for administering eligibility checks for the Offer:

- Local authorities accept applications and check eligibility (this is referred to in the RIA as the “do nothing option” as this is the option expected to be put in place as a default should no legislation be taken forward);
- HMRC to accept applications and conduct eligibility checks;
- The Welsh Government to accept applications and manually check eligibility; and
- Contracted party accept applications and check eligibility includes option of recruited one authority to conduct these checks.

The Welsh Government has chosen option 2, to ask the HMRC to conduct eligibility checks, as it currently does as part of the English programme. The Welsh Government estimates that this option will cost £9,118,000 between 2019/20 and 2024/25, with the annual costs estimated to be around £1.2 million. These costing are for the administration of the scheme and not the cost of delivering the Offer itself.

The estimated costs of the other options range from £15.5 million to £26.8 million over the same timeframe. The Welsh Government also argues that the HMRC option will reduce the risk of fraud and data security issues given its established systems.

Section 9 of Part 2 provides a summary of the numerous specific Impact Assessments the Welsh Government conducted when developing the Bill. The majority were considered not to be relevant, such as assessments on Biodiversity, State Aid and Climate Change. Four full Impact Assessments have been produced:

- Equality Impact Assessment;
- Children's Rights Impact Assessment;
- Welsh Language Impact Assessment; and
- the Justice System Impact Assessment.

These are summarised in the EM and are available in full on the [\*\*Welsh Government website\*\*](#).

The RIA establishes that there will be a national review of the Childcare Offer, which will provide an interim report in December 2020 and a final summative report in summer 2023

Annex 1 of the EM includes the Explanatory Notes for the Bill, Annex 2 has an Index of Standing Order requirements in relation to the Bill and Annex 3 has a Schedule of Amendments that the Bill will make to the *Commissioners for Revenue and Customs Act 2005*. Annexes 4 – 8 relate to the cost modelling contained in the RIA.

## Statement of Policy Intent for Subordinate Legislation

The Statement of Policy Intent is intended to provide:

an indication of the current policy intention for the subordinate legislation that the Welsh Ministers would be empowered or required to make under the provisions of the Childcare Funding (Wales) Bill (the Bill). It has been prepared in order to assist committees during the scrutiny of the Bill

It does this by providing a summary of the regulations the Welsh Government currently intends to introduce with the powers granted under sections 1, 2 and 10 of the Bill. The Statement also indicates that:

the Welsh Government will be publishing an administrative scheme which will describe how and where the hours of childcare can be taken up and who will be able to deliver the childcare for the purposes of the scheme.

The Welsh Government expects this scheme to be based on its current, non-statutory, **Guidance for Early Implementer Local Authorities**.

However the current, or any future, Welsh Government is not legally bound to act in accordance with the Statement of Policy Intent. The Bill does not provide for the administrative scheme to have legal effect, therefore its current status is unclear.



## 4. The Assembly scrutiny of the Bill

### The Presiding Officer's statement

The Presiding Officer's (PO), Elin Jones AM, statement, which accompanied the Bill on its introduction on 16 April 2018, highlighted her view that while 'most' of the Bill's provisions would be within the Assembly's competence, some of them would not. The PO highlights that

Sections 4(2), 4(5)(b), (c) and (d), and 5(3) would not be within competence. This is because these provisions require the consent of the Secretary of State to bring them within the competence of the National Assembly for Wales and this necessary consent has not been obtained at this time.

It will now be up to the Welsh Government to secure the relevant consents in order for the provisions to be within the Assembly's competence. The Welsh Government's interpretation of the Assembly's competence in relation to this Bill is contained in Chapter 2 of Part 1 of the Bill's Explanatory Memorandum.

The PO has also indicated that a financial resolution is required for this Bill. Further information about financial resolutions is available in section 3 of the **Guide to scrutiny stages for Public Bills**.

### The Children, Young People and Education Committee

The Assembly's Business Committee has referred the Bill to the **Children, Young People and Education (CYPE) Committee** and set a deadline of 6 July 2018 for it to report on the general principles of the Bill (Stage 1 scrutiny).

In order to inform its report, the CYPE Committee launched a 4 week consultation on 20 April 2018 (closing 18 May 2018) to get the views of stakeholders and the public on the Bill. The CYPE Committee will also take oral evidence on the Bill from a range of stakeholders in May and June. Witnesses will include the Minister for Children and Social Care, currently due to give evidence on the Bill on 16 May 2018 and 14 June 2018.

Further information on the Committee's scrutiny at Stage 1 is available on **the Bill webpage**.

## Further Scrutiny

The Bill will also be subject to oversight and scrutiny from the **Constitutional and Legislative Affairs** (CLA) Committee and **Finance Committee**, which will also report from their own perspectives. The Minister for Children and Social Care is due to give evidence to the CLA **Committee on 14 May 2018** and the Finance Committee on 13 June 2018.

The Business Committee has also agreed that if the Bill passes Stage 1 scrutiny, Stage 2 proceedings should be completed by 12 October 2018.

## 5. Welsh Glossary

The Welsh Language version of [the Bill is available here](#).

### Terms within the Bill

- Childcare – gofal plant
- Funding – cyllid
- Provision – darpariaeth
- Regulation – rheoliad
- Statutory Instrument – Offeryn Statudol

### Phrases within the Bill

- Confer powers – rhoi pwerau
- Consequential amendment – diwygiad canlyniadol
- Determinations as to eligibility – penderfyniadau ynghylch cymhwysra
- Eligibility for funding – cymhwysra i gael cyllid
- False or misleading information – gwybodaeth anwir neu gamarweiniol
- Financial penalty – cosb ariannol
- First-tier Tribunal – Tribiwnlys Haen Gyntaf
- Commissioners for Her Majesty’s Revenue and Customs – Comisiynwyr Cyllid a Thollau Ei Mawrhydi  
Impose obligations – gosod rhwymedigaethau
- Onward disclosure – datgelu ymlaen
- Onward disclosure of information – datgelu gwybodaeth ymlaen
- Parental responsibility – cyfrifoldeb rhieni
- Provision of childcare – darparu gofal plant
- Qualifying children – plant cymhwysol

- Qualifying information – gwybodaeth gymhwysol
- Qualifying parents – rhieni cymhwysol
- Specified in the regulations – a bennir mewn rheoliadau
- Supplementary provision – darpariaeth atodol
- Treasury – y Trysorlys
- Working parents – rhieni sy'n gweithio

### Phrases within the Explanatory Memorandum

- Administrative scheme – cynllun gweinyddu
- Carers allowance – lwfans gofalwyr
- Childcare Offer – y Cynnig Gofal Plant
- Childcare Offer Stakeholder Reference Group – Grŵp Cyfeirio Rhanddeiliaid y Cynnig Gofal Plant
- Criminal sanction – cosb droseddol
- Disposable income – incwm gwario
- Dual-earning – ennill dau gyflog
- Early education and childcare – addysg gynnar a gofal plant
- Early Implementer Local Authorities (EILAs) – Awdurdodau Lleol sy'n Weithredwyr Cynnar
- Employment and support allowance – lwfans cyflogaeth a chymorth
- Incapacity benefit – budd-dal analluogrwydd
- Kinship carers – gofalwyr sy'n berthnasau
- National minimum wage – isafswm cyflog cenedlaethol
- National living wage – cyflog byw cenedlaethol
- Severe disablement allowance – lwfans anabledde difrifol
- Statutory parental, maternity, paternity or adoption leave – absenoldeb rhianta, mamolaeth, tadolaeth neu fabwysiadu statudol

- Tax Free Childcare – gofal plant di-dreth
- Universal entitlement – hawl gyffredinol
- Workless household – aelwyd heb waith
- Zero hours contract – contract dim oriau

## General legislative terms

- Consultation – ymgynghoriad
- Draft Bill – Bil drafft
- Explanatory Memorandum – Memorandwm Esboniadol
- Financial resolution – Penderfyniad ariannol
- General principles – Egwyddorion cyffredinol
- Guidance – Canllawiau
- Legislative competence – Cymhwysedd deddfwriaethol
- Legislative framework – fframwaith deddfwriaethol
- Member in charge (of the Bill) – Aelod sy'n gyfrifol (am y Bil)
- Minister of the Crown – Un o Weinidogion y Goron
- Ongoing costs – costau rheolaidd
- Pre-legislative scrutiny – craffu cyn y broses ddeddfu
- Regulatory Impact Assessment (RIA) – Aseiad Effaith Rheoleiddiol
- Royal Assent – Cydsyniad Brenhinol
- Short title – Enw byr
- Stage 1 – Cyfnod 1
- Subordinate legislation – is-ddeddfwriaeth
- Transitional costs – costau pontio